

SECOND REGULAR SESSION

SENATE BILL NO. 714

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Pre-filed December 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

3292S.03I

AN ACT

To repeal sections 573.025, 573.035, and 573.037, RSMo, and to enact in lieu thereof four new sections relating to child pornography, with penalty provisions and an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 573.025, 573.035, and 573.037, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 573.025,
3 573.035, 573.037, and 573.038, to read as follows:

573.025. 1. A person commits the crime of promoting child pornography
2 in the first degree if, knowing of its content and character, such person possesses
3 with the intent to promote or promotes [obscene material that has a child as one
4 of its participants or portrays what appears to be a child as a participant or
5 observer of sexual conduct] **child pornography of a child less than fourteen**
6 **years of age or obscene material portraying what appears to be a child**
7 **less than fourteen years of age.**

8 2. Promoting child pornography in the first degree is a class B felony
9 unless the person knowingly promotes such material to a minor, in which case it
10 is a class A felony. **No person who pleads guilty to or is found guilty of,**
11 **or is convicted of promoting child pornography in the first degree shall**
12 **be eligible for probation, parole, or conditional release for a period of**
13 **three calendar years.**

14 3. Nothing in this section shall be construed to require a provider of
15 electronic communication services or remote computing services to monitor any
16 user, subscriber or customer of the provider, or the content of any communication
17 of any user, subscriber or customer of the provider.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

573.035. 1. A person commits the crime of promoting child pornography
2 in the second degree if knowing of its content and character such person
3 possesses with the intent to promote or promotes child pornography [or obscene
4 material that has a minor as one of its participants, or portrays what appears to
5 be a minor as a participant or observer of sexual conduct] **of a minor under the
6 age of eighteen or obscene material portraying what appears to be a
7 minor under the age of eighteen.**

8 2. Promoting child pornography in the second degree is a class C felony
9 unless the person knowingly promotes such material to a minor, in which case it
10 is a class B felony. **No person who is found guilty of, pleads guilty to, or
11 is convicted of promoting child pornography in the second degree shall
12 be eligible for probation.**

573.037. 1. A person commits the crime of possession of child
2 pornography if, knowing of its content and character, such person possesses any
3 [obscene material that has a child as one of its participants or portrays what
4 appears to be a child as an observer or participant of sexual conduct] **child
5 pornography of a minor under the age of eighteen or obscene material
6 portraying what appears to be a minor under the age of eighteen.**

7 2. Possession of child pornography is a class [D] C felony unless the
8 person **possesses more than twenty still images of child pornography,
9 possesses one motion picture, film, videotape, videotape production, or
10 other moving image of child pornography, or** has pleaded guilty to or has
11 been found guilty of an offense under this section, in which case it is a class [C]
12 B felony.

573.038. 1. **In any criminal proceeding, any property or material
2 that constitutes child pornography shall remain in the care, custody,
3 and control of either the state or the court.**

4 2. (1) **Notwithstanding Missouri Rule of Criminal Procedure
5 25.03 or any other rule or statute to the contrary, a court shall deny, in
6 any criminal proceeding, any request by the defendant to copy,
7 photograph, duplicate, or otherwise reproduce any property or
8 material that constitutes child pornography, so long as the state makes
9 the property or material reasonably available to the defendant.**

10 (2) **For the purposes of subdivision (1) of this subsection,
11 property or material shall be deemed to be reasonably available to the
12 defendant if the state provides ample opportunity for inspection,**

13 **viewing, and examination at a state or other governmental facility of**
14 **the property or material by the defendant, his or her attorney, and any**
15 **individual the defendant may seek to qualify to furnish expert**
16 **testimony at trial.**

Section B. Because of the need to protect the children of this state, section
2 A of this act is deemed necessary for the immediate preservation of the public
3 health, welfare, peace and safety, and is hereby declared to be an emergency act
4 within the meaning of the constitution, and section A of this act shall be in full
5 force and effect upon its passage and approval.

Unofficial ✓

Bill

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